UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,166	03/27/2001	Tomas Benda	1979.0010000/MBR/RDL	8133

26111 7590 06/28/2004	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC	CHANKONG, DOHM	
1100 NEW YORK AVENUE, N.W.	ART UNIT	PAPER NUMBER
WASHINGTON, DC 20005	2154	

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>27 March 2001</u>.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-4</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-4</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/16/01,11/4/04</u>.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____ .

DETAILED ACTION

1.   Claims 1-4 are presented for examination.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form

the basis for the rejections under this section made in this Office action:

> (e) the invention was described in a patent granted on an application for patent by another filed in the
> United States before the invention thereof by the applicant for patent, or on an international application by
> another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before
> the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of

1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments

Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly

from an international application filed before November 29, 2000. Therefore, the prior art

date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the

AIPA (pre-AIPA 35 U.S.C. 102(e)).

3.   Claims 1 and 4 are rejected under 35 U.S.C 102(e) as being anticipated by Clark et al

(hereinafter Clark), U.S Patent No. 6,073,163.

4.   As to claim 1, Clark teaches a method for the secure creation and distribution of

instructions to support a network application, comprising the steps of:

receiving a connection request from a user machine (column 6, lines 42-51);

selecting one of a plurality of servant nodes (column 11, lines 30-44);

sending a first code package to said user machine, wherein said first code package includes instructions and data that facilitate said user machine connecting to said one of said plurality of servant nodes (column 6, line 52 to column 7, line 5);

establishing a connection between said user machine and said one of said plurality of servant nodes (column 6, line 67 to column 7, line 5);

commencing an application on said one of said plurality of servant nodes (column 5, lines 46-57 and column 10, lines 37-40);

receiving a query from said user, wherein said query is related to said application (column 5, line 55 to column 6, line 30);

sending a second code package to said user machine, wherein said second code package includes instructions and data partially responsive to said query (column 9, lines 39-61);

receiving an answer computed by said user machine utilizing said second code package (column 10, lines 51-53 with the UI event message from the client being equivalent to an answer from the user machine, utilizing the as-needed code sent from the server);

parsing said answer received from said user machine and combining said answer with additional data to form a final response to said query received from said user machine (column 10, lines 55-61); and

sending said user said final response (column 10, lines 55-61);

whereby said first and second code packages allow an application service provider to

support the delivery of a network-based application program that is uniquely presented,

structured, and executed for said user (abstract, Figure 2, and column 4, lines 15-24).

5.   Claim 4 is a computer program product that implements the steps of the method of

claim 1. Therefore, claim 4 is rejected for the same reasons set forth in above paragraph 4, for

claim 1.

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art
> are such that the subject matter as a whole would have been obvious at the time the invention was made to a
> person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be
> negatived by the manner in which the invention was made.

7.   Claims 2 and 3 are rejected under 35 U.S.C 103(a) as being unpatentable over Clark, in

view of Adunuthula et al (hereinafter Adunuthula), U.S Patent No. 6,026,404.

8.   Adunuthula was cited by applicant in IDS, dated 7.16.2001.

9.   As to claim 2, Clark teaches a system for providing an application service provider

with a network-based operating platform to deliver application programs to a user (abstract),

comprising:

a dispatcher connected over a network to at least one user machine, wherein said

dispatcher has means for receiving a connection request from said at least one user machine

(Figure 2, items 250, 256 and 210, where item 256 is the dispatcher);

a plurality of servant nodes (column 11, lines 29-43);

a database connected to said dispatcher and to each of said plurality of servant nodes

(Figure 2, item 220, 218, 250);

means for said a dispatcher, for sending a first code package to said at least one user

machine, wherein said first code package includes instructions and data that facilitate its

connection to said one of said plurality of servant nodes (column 6, line 52 to column 7, line 5

and claim 1); and

means for said one of said plurality of servant nodes to access said database in order to

send a second code package to said at least one user machine, wherein said second code

package includes instructions and data responsive to query received from said least one user

machine (Figure 2, items 218, 220 and 216, column 5, lines 40-41, column 6, lines 3-8 and

column 9, lines 39-61);

whereby said second code package allows the application service provider to deliver

the network-based application program to the user (column 10, lines 32-40).

However, Clark does not teach means for said dispatcher to access said database in

order to select one of said plurality of servant nodes that is available to service said

connection request from said at least one user machine.

10.   Adunuthula teaches means for said dispatcher to access said database in order to select

one of said plurality of servant nodes that is available to service said connection request from

said at least one user machine (column 10, lines 14-55 – with the resource manager equivalent

to the dispatcher). It would have been obvious to one of ordinary skill in the art at the time

the invention was made to include Adunuthula's server selection functionality into Clark to

be able to implement load-balancing among the servers within Clark's system to more

efficiently distribute users to available servers.

11.   As to claim 3, Clark teaches the system wherein said network is at least a portion of

the Internet (column 4, lines 15-18).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure.

U.S Patent No. 6,006,034 to Heath et al;

U.S Patent No. 6,119,165 to Li et al;

U.S Patent No. 6,138,168 to Kelly et al.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Dohm Chankong whose telephone number is (703)305-8864.

The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (703)305-8498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DC

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